

1 STEPHEN L. SCHIRLE #96085  
2 MARK H. PENSKAR #77725  
3 DARREN P. ROACH #159998  
77 Beale Street  
3 San Francisco, CA 94105

4 Direct correspondence to:  
5 DARREN P. ROACH  
P.O. Box 7442, B30A  
6 San Francisco, CA 94120  
Telephone: (415) 973-6345  
Facsimile: (415) 973-5520

7 Attorneys for Defendant  
8 PACIFIC GAS AND ELECTRIC COMPANY

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

12 WILLIAM A. SMITH AND JOSE LEMUS,  
13 Plaintiff,  
14 v.  
15 PACIFIC GAS AND ELECTRIC COMPANY,  
16 Defendant.

No. C072126

DEFENDANT PACIFIC GAS AND  
ELECTRIC COMPANY'S REQUEST  
FOR JUDICIAL NOTICE IN SUPPORT  
OF MOTION TO DISMISS PORTIONS  
OF FIRST AMENDED COMPLAINT OF  
PLAINTIFFS WILLIAM SMITH AND  
JOSE LEMUS

Date: June 5, 2007  
Time: 9:00 a.m.  
Before: Hon. Elizabeth D. Laporte  
United States Magistrate Judge

20 In support of its Notice of Motion and Motion to Dismiss Portions of First Amended  
21 Complaint of Plaintiffs William Smith and Jose Lemus, Defendant Pacific Gas and Electric  
22 Company hereby requests the Court take judicial notice of the following documents:  
23

EXHIBIT	DATE	CHARGE	CHARGE NUMBER
A	June 12, 2006	William Smith's Charge of Discrimination filed with the Equal Employment Opportunity Commission	485-2006-00186
	October 31, 2006	EEOC Notice of Right to Sue	

1	B	July 21, 2005	William Smith's Charge of Discrimination filed with the Equal Employment Opportunity Commission	370-2005-02100
2		October 31, 2006	EEOC Notice of Right to Sue	
3	C	October 18, 2006	Jose Lemus' Charge of Discrimination filed with the Equal Employment Opportunity Commission	370-2006-0107
4		November 15, 2006	EEOC Notice of Right to Sue	

Federal Rule of Evidence 201 permits courts to judicially notice facts not reasonably subject to dispute because they are either (1) generally known or (2) "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." A court may consider judicially noticed matters at the motion to dismiss stage. *Daghlian v. DeVry Univ., Inc.*, 461 F.Supp.2d 1121, 1125 (C.D. Cal. 2006); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9<sup>th</sup> Cir. 1986). Further, a Court may judicially notice EEOC documents as they are public records and because they are referenced in Plaintiffs' First Amended Complaint. *Gallo v. Board of Regents of Univ. of Cal.*, 916 F.Supp. 1005 (S.D. Cal. 1995); *McBride v. Routh*, 51 F.Supp.2d 153, 155 (D. Conn. 1999).

Dated: April 24, 2007

STEPHEN L. SCHIRLE  
DARREN P. ROACH

By:

DARREN P. ROACH

Attorneys for Defendant  
PACIFIC GAS AND ELECTRIC COMPANY

# **EXHIBIT A**

## U.S. EQUAL OPPORTUNITY COMMISSION

## NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: William A. Smith  
2358 Goshen Avenue  
Clovis, CA 93611

From: San Francisco District Office - 550  
350 The Embarcadero  
Suite 500  
San Francisco, CA 94105

On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR § 1601.7(a))

Charge No.	EEOC Representative	Telephone No.
485-2006-00186	Bryne A. Moore, Investigator	(415) 625-5690

(See also the additional information enclosed with this form.)

## NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of the charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of your charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

*Michael Baldonado*  
fr: Joan Ehrlich,  
District Director

OCT 31 2006

(Date Mailed)

Enclosure(s)

cc: Patricia Toussaint  
Sr. EEO Consultant  
PACIFIC GAS & ELECTRIC CO  
245 Market Street  
Mailcode N2E  
San Francisco, CA 94177

Dan Siegel  
City Square  
499 14<sup>th</sup> Street, Suite 220  
Oakland, CA 94612

## INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.)*

*If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)*

### Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),

#### PRIVATE SUIT RIGHTS --

##### **or the Age Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice. Therefore, you should keep a record of this date. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed within 90 days of the date this Notice was mailed to you (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

#### PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment; backpay due for violations that occurred more than 2 years (3 years) before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/00 to 12/1/00, you should file suit before 7/1/02 -- not 12/1/02 -- in order to recover unpaid wages due for July 2000. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA backpay recovery period.

#### ATTORNEY REPRESENTATION -- Title VII and the ADA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

#### ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within 6 months of this Notice. (Before filing suit, any request should be made within the next 90 days.)

**IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.**



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

(SEE ADDRESS CHECKED BELOW)

TTY # (800) 700-2320



1001 Tower Way, Suite 250  
Bakersfield, CA 93309  
H (661) 395-2729

Ms. Patricia Toussaint  
Sr. EEO Consultant  
Pacific Gas & Electric Company  
245 Market Street, Mailcode N2E  
San Francisco, CA 94177

480-2006-00186  
EEOC Number: --

William A. Smith  
Case Name:

1320 E. Shaw Avenue, Suite 150  
Fresno, CA 93710  
C (559) 244-4760

Date: June 15, 2006

**NOTICE TO COMPLAINANT AND RESPONDENT**

611 West Sixth Street, Suite 1500  
S/T Los Angeles, CA 90017  
(213) 439-6799

This is to advise you that the above-referenced complaint is being referred to the California Department of Fair Employment and Housing (DFEH) by the U.S. Equal Employment Opportunity Commission (EEOC). The complaint will be filed in accordance with California Government Code section 12960. This notice constitutes service pursuant to Government Code section 12962.

1515 Clay Street, Suite 701  
M Oakland, CA 94612  
(510) 622-2941

**No response to the DFEH is required by the respondent.**

2000 "O" Street, Suite 120  
E Sacramento, CA 95814  
(916) 445-5523

The EEOC will be responsible for the processing of this complaint. DFEH will not be conducting an investigation into this matter. EEOC should be contacted directly for any discussion of the charge. DFEH is closing its case on the basis of "processing waived to another agency."

1350 Front Street, Suite 3005  
D San Diego, CA 92101  
(619) 645-2681

**NOTICE TO COMPLAINANT OF RIGHT-TO-SUE**

San Francisco District Office  
A 1515 Clay Street, Suite 701  
Oakland, CA 94612  
(510) 622-2973

Since DFEH will not be issuing an accusation, this letter is also your right-to-sue notice. According to Government Code section 12965, subdivision (b), you may bring a civil action under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The lawsuit may be filed in a State of California Superior or Justice Court. Government Code section 12965, subdivision (b), provides that such a civil action must be brought within one year from the date of this notice. Pursuant to Government Code section 12965, subdivision (d)(1), this one-year period will be tolled during the pendency of the EEOC's investigation of your complaint. You should consult an attorney to determine with accuracy the date by which a civil action must be filed. This right to file a civil action may be waived in the event a settlement agreement is signed. Questions about the right to file under federal law should be referred to the EEOC.

111 North Market Street, Suite 810  
G San Jose, CA 95113  
(408) 277-1277

The DFEH does not retain case records beyond three years after a complaint is filed.

**Remember: This Right-To-Sue Notice allows you to file a private lawsuit in State court.**

Sincerely,

WANDA J. KIRBY  
Chief Deputy Director